

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Orig w/ affidavit of mailing

76-1055

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-1055

*B
Pgs*

UNITED STATES OF AMERICA,

Appellee,

-against-

SUAT C. TORUN,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX



DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

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Transcript of Plea Minutes dated October
23, 1975

1-12

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
-----X

3 UNITED STATES OF AMERICA,

4 - versus -

75 CR 781

5 SUAT C. TORUN,

6 Defendant.
7 -----X

8
9 United States Courthouse
Brooklyn, New York

10 October 23, 1975
11 2:00 p.m.
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13
14

15 B e f o r e :

16 HONORABLE JOHN R. BARTELS, U. S. D. J.
17
18
19
20
21
22

23 ILENE GINSBERG
24 OFFICIAL COURT REPORTER
25

A P P E A R A N C E S :

DAVID G. TRAGER, U. S. ATTY.
BY: CHARLES E. CLAYMAN, AUSA

HAROLD I. VENOKUR, ESQ.
Attorney for defendant

1
2 THE COURT: What is the story here, gentlemen?

3 MR. CLAYMAN: We went before the miscellaneous
4 judge, Judge Neaher, and filed an information. We were then
5 informed of the new rule of the Court which did not permit
6 Judge Neaher to take the pleading on this because he would
7 not be the judge doing the sentencing. So, it was placed in
8 the wheel and brought before your Honor. It's a misdemeanor
9 information.

10 THE COURT: All right. 844(a)?

11 844(a) of Title 21 imposes a penalty of five
12 thousand dollars or one year; correct?

13 MR. CLAYMAN: That is correct, your Honor.

14 THE COURT: Now, Mr. Suat C. Torun, before
15 accepting your plea of guilty to the information 75 CR 781
16 I must read the same to you.

17 It says that:

18 On or about the 20th day of May, 1974, within
19 the Eastern District of New York, the defendant Suat C. Torun
20 did knowingly and intentionally possess a quantity of cocaine,
21 a Schedule II controlled substance, which possession was not
22 pursuant to a valid prescription or order from a practitioner
23 acting in the course of his professional practice and which
24 possession was not authorized by any sub-chapter of the
25 Narcotics Control Act of 1970. Title 21, United States Code,

Section 844(a).

How old are you?

THE DEFENDANT: I am twenty-five.

THE COURT: What is your name?

MR. VENOKUR: My name is Harold I. Venokur,
16 Court Street, Brooklyn.

THE COURT: Have you filed your notice of
appearance?

MR. VENOKUR: I have, your Honor.

THE COURT: Mr. Venokur, have you advised this
defendant of the nature of the charge against him?

MR. VENOKUR: Yes, your Honor, I have.

THE COURT: Mr. Torun, do you understand the
nature of the charge against you?

THE DEFENDANT: Yes, I do.

THE COURT: And do you understand, Mr. Torun,
that with respect to this charge you have a right to a speedy
and a public trial by an impartial jury?

THE DEFENDANT: Yes, I do.

THE COURT: And do you understand if you went
to trial you would have the following rights: You would
have the right to be confronted by witnesses against you --

THE DEFENDANT: Yes.

THE COURT: (continuing) -- And the right to

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2 compulsory process to obtain witnesses in your favor.

3 THE DEFENDANT: Yes.

4 THE COURT: And the right to remain silent.

5 THE DEFENDANT: Yes.

6 THE COURT: And the right to take the witness
7 stand in your own behalf.

8 THE DEFENDANT: Yes.

9 THE COURT: When I say you have a right to
10 remain silent, you have the right to not take the witness
11 stand if you so choose and the jury would not be able to
12 take your failure to testify as any evidence against you.
13 Do you understand all that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Furthermore, do you understand that
16 if you plead not guilty you will be presumed to be innocent
17 until the United States has proved you guilty beyond a reason-
18 able doubt and if your guilt is not proved beyond a reasonable
19 doubt you cannot be found guilty. Do you understand that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Do you understand that if you plead
22 guilty to this charge you may be sentenced by the Court to a
23 term of imprisonment of one year and also fined five thousand
24 dollars?

25 THE DEFENDANT: Yes sir, I do.

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2 THE COURT: Has anyone suggested to you that
3 you would receive a lighter sentence if you pled guilty?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: I wish to inform you that upon
6 your plea of guilty the Court may impose the same punishment
7 as if you were convicted by a jury.

8 THE DEFENDANT: Yes.

9 THE COURT: You understand you are waiving
10 your right to appeal?

11 THE DEFENDANT: Yes.

12 THE COURT: I point out to you that you do have
13 a right to plead not guilty.

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that if you plead
16 guilty there will be no further trial of any kind and that
17 by pleading guilty you are waiving your right to a trial by
18 jury? Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Now, if you do plead not guilty
21 you have a right to assistance of counsel in your defense
22 at each and every stage of the proceeding and if you cannot
23 afford counsel the Court will appoint counsel for you.

24 Now, after hearing your rights, how do you
25 plead, guilty or not guilty?

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2 THE DEFENDANT: Guilty, your Honor.

3 THE COURT: Has anyone made any threats, prom-
4 ises or statements to induce you to plead guilty?

5 THE DEFENDANT: No, they have not.

6 THE COURT: Have you made any promises, Mr.
7 Clayman, in connection with this information?

8 MR. CLAYMAN: There is an understanding between
9 the Government and the defendant that if this plea to this
10 information will cover an investigation by the Government of
11 the defendant and that no other charges will be filed against
12 him as a result of that investigation.

13 THE COURT: Has anyone resorted to any coercion,
14 physical or mental to get you to plead guilty?

15 THE DEFENDANT: No.

16 THE COURT: Have you discussed this plea with
17 your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: Is this plea being made voluntarily
20 because you are guilty and for no other reason?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Has your plea of guilty been made
23 with a full understanding of all of the consequences here?

24 THE DEFENDANT: Yes.

25 THE COURT: You understand all the consequences?

1
2 THE DEFENDANT: Yes, I do.

3 THE COURT: Has anybody estimated what your
4 sentence actually may be in this case? Has anyone given you
5 any indication as to what your sentence would be?

6 THE DEFENDANT: No.

7 THE COURT: Now, tell us, is it true that you
8 did have in your possession a quantity of cocaine on May 20,
9 1974, which was not pursuant to any prescription or order
10 from a practitioner and was not authorized by the Narcotics
11 Control Act?

12 THE DEFENDANT: Yes.

13 THE COURT: What business are you in?

14 THE DEFENDANT: I am in the recycling business --
15 plastics.

16 THE COURT: Well, where did you get this cocaine?

17 THE DEFENDANT: From a person that I had not
18 known previously.

19 THE COURT: Did you buy it?

20 THE DEFENDANT: Yes.

21 THE COURT: How much was it?

22 THE DEFENDANT: How much was it?

23 THE COURT: How much in quantity, not price.

24 THE DEFENDANT: Actually, there has been some
25 question to that exact amount.

1
2 THE COURT: You don't know the exact amount?

3 THE DEFENDANT: No.

4 THE COURT: All right.

5 You have talked this over with your attorney
6 and you have no objections to the way your attorney has
7 represented you; is that true?

8 THE DEFENDANT: Yes.

9 THE COURT: Have you agreed to your client's
10 plea of guilty, Mr. Venokur?

11 MR. VENOKUR: Yes. I not only agree but recom-
12 mend that he take that plea.

13 THE COURT: In your opinion, Mr. Clayman, do
14 you have the necessary proof to prove this man guilty beyond
15 a reasonable doubt?

16 MR. CLAYMAN: Yes.

17 THE COURT: What is the bail?

18 MR. VENOKUR: He is on his own recognizance.

19 MR. CLAYMAN: No objection to that continuing
20 until sentence, your Honor.

21 THE COURT: That will be continued.

22 How long are you going to take to give this man
23 a probation report?

24 THE PROBATION OFFICER: We are up to five or
25 six weeks now.

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2 MR. CLAYMAN: The defendant is only twenty-
3 five and should he be advised of the possibility of the Youth
4 Correction Act treatment --

5 MR. VENOKUR: I was going to make that request
6 at the time of sentence, your Honor.

7 THE COURT: I think he should be advised.
8 Generally, we very seldom have just a mis-
9 demeanor --

10 MR. CLAYMAN: I have never known of one but
11 I just think to be on the safe side --

12 THE COURT: Oh no, no. He has got to be
13 advised.

14 MR. CLAYMAN: I have never seen the treatment
15 done on a misdemeanor.

16 THE COURT: Yes. It's most unusual.

17 Let me say this to you, Mr. Torun: Instead
18 of sentencing you under the regular adult sentence fixed by
19 the statute for the offense to which you plead which I told
20 you was one year and/or five thousand dollars, you may be
21 sentenced by the Court under the Federal Corrections Act.

22 Under that Act you may be sentenced to the
23 custody of the Attorney General for treatment by the Youth
24 Division of the Board of Parole and thereafter you may be
25 discharged conditionally on or before the expiration of four

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2 years.

3 You see, they must let you out at the end of
4 four years unconditionally or keep you for another two years.
5 But, they must let you out at the end of six years. That
6 would be up to the Board of Parole, whether or not they would
7 keep you that length of time or what length of time they would
8 keep you. That's up to them and you would not know it.

9 Now, it is provided in the statute that the
10 Youth Division under the Youth Correction Act may at any time,
11 after notice to the director of the division, release you
12 under supervision and the period of such supervision will be
13 entirely up to you.

14 While in custody you will normally be assigned
15 to a special institution for youths which has facilities and
16 programs designed to better help young men like yourselves.

17 If you have any questions about this type of
18 sentence, please let me know.

19 MR. VENOKUR: There is something in the law --
20 I'm not sure -- where the sentence under the Youth Act cannot
21 exceed that under the adult act.

22 THE COURT: No, just the other way around.
23 Once you find a penalty that can be imposed which is above
24 six years you never have to inform a youthful offender that
25 he also can be sentenced under the Youth Correction Act. But,

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2 if you sentence under the Youth Correction Act the time,
3 certainly can exceed the time of the regular adult sentence.
4 That is exactly why the Youth is told in advance so that if
5 he wishes he may not want to plead guilty and can withdraw
6 his plea of guilty.

7 Do you understand that, Mr. Torun?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: All right.

10 MR. VENOKUR: The date is open; is that right?

11 THE COURT: Yes.

12 MR. VENOKUR: Thank you.
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AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

----- EVELYN COHEN -----, being duly sworn, says that on the 5th
day of April, 1976, I deposited in Mail Chute Drop for mailing in the
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and
State of New York, a GOVERNMENT'S APPENDIX
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper
directed to the person hereinafter named, at the place and address stated below:

----- Headley & Zeitlin, Esqs. -----

----- 66 Court Street -----

----- Brooklyn, N.Y. 11201 -----

Sworn to before me this
5th day of April, 1976

Olga S. Morgan
OLGA S. MORGAN
Notary Public, State of New York
No. 24-4501766
Qualified in Kings County
Commission Expires March 30, 1977

Evelyn Cohen